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)Charge No: 1999 CF 1255
)EEOC No (S):21 B 990508
)ALS No: 11099

1. Complainant filed a Charge against Respondent with the Illinois Department of Human Rights (Department) on October 30, 1998, perfected December 15, 1998.
2. On November 17, 1999, the Department filed a Complaint with the Illinois Human Rights Commission (Illinois Commission) on Complainant's behalf alleging Complainant to have been aggrieved by practices of discrimination on the basis of physical handicap (Spinal Muscular Atrophy-Mobility Impairment) in violation of the Illinois Human Rights Act, (Act) 775 ILCS 5/101-1 et. seq.
3. Complainant alleged in her Complaint that Respondent discriminated against her when it failed to give her a starting date to begin her employment with Respondent.
4. On October 28, 1999, Complainant filed a Complaint with the City of Chicago Commission on Human Relations (Chicago Commission) alleging Respondent discriminated against her on the basis of her physical disability, which she described as "a form of muscular dystrophy."
5. The facts in the Chicago Commission case were essentially the same as those in the Illinois Commission Complaint.
6. By order of an administrative law judge of the Illinois Commission dated September 11, 2000, the matter was stayed pending the resolution of Complainant's Complaint at the Chicago Commission.
7. On January 18, 2001 the Chicago Commission issued a decision in favor of the Respondent and against Complainant finding the Complainant failed to prove Respondent discriminated against her on the basis of her disability.

8. On May 18, 2001, Respondent filed the instant Motion for Summary Decision before the Illinois Commission alleging that this matter is barred by the doctrine of res judicata.
9. By order dated May 17, 2001, Complainant was ordered to file a response to Respondent's motion by June 8, 2001.
10. The record indicates no response has been filed, nor has any request for extension of time to file a response been made.
11. Complainant has failed to submit any evidence or legal argument in opposition to Respondent's motion.

Discussion

Respondent contends that Complainant's Complaint is barred on the basis of the doctrine of res judicata. Respondent cites *Davis and Commonwealth Edison*, ___ Ill. HRC Rep. ___ (Charge No. 1989CF1794, August 24, 1998) contending that res judicata should apply if the following three elements are met: (1) the parties in the present action are the same parties, or are in privity with the same parties, as the ones in the first action (2) the cause of action in both cases is the same, and (3) a decision on the merits was entered in the first action. Respondent argues that (1) the parties are the same in both actions, (2) the same undisputed facts gave rise to both actions and (3) the Chicago Commission entered a final order dismissing Complainant's Complaint.

The record supports Respondent's argument. The first element is met because the Parties in the Illinois Commission action are the same parties as in the Chicago Commission action. As to the second element, based upon the record, both actions stem from Respondent's having failed to give Complainant a starting date of employment after she had made application and interviewed for the position of Customer Service Representative in May 1998. Complainant alleged in both actions that this failure resulted from discrimination based on her physical handicap. The third element has also been met. Complainant had an opportunity to adjudicate the claims pending before the Illinois Commission; she merely chose another forum in which to do so. Respondent cites *Ordon and Ill. Dept of Human Rights (Al Rahmon Animal Hospital / Dr. Mohammad Rahman*, ___ Ill. HRC Rep. ___ (Charge No. 1993CN1329), for the proposition that, although the Chicago Commission is not a "court," for the purposes of issuing a final decision on the merits, final orders by the Chicago Commission are entitled to res judicata effect on Commission decisions. Complainant submits a copy of the Chicago Commission order dated January 18, 2001, and the attached final ruling dated January 17, 2001. The final ruling states that an administrative hearing was held on May 15 and 16, 2000, that several stipulated facts, seven witnesses and several documentary exhibits were presented. The final ruling is entitled Final Ruling on Liability and includes "Findings of Fact" and "Conclusions of Law". The order states that parties may file a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County. Respondent asserts in its accompanying memorandum that Complainant has not appealed the City Commission's Final Ruling.

Respondent's argument is well supported and Complainant has submitted nothing to contradict Respondent's position. As the Commission has previously stated, "We will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion." *Jones and Burlington Northern Railroad* 25 Ill.HRC Rep. 101 at 102 (1986).

This matter is being considered pursuant to Respondent's Motion for Summary Decision. A summary decision is analogous to a summary judgment. *Cano v. Village of Dolton*, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). A motion for summary decision should be granted where there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. *Strunin and Marshall Field & Co.*, 8 Ill. HRC Rep. 199 (1983).

Paragraph 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 et. seq., specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted the standards used by the Illinois courts in considering motions for summary judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy. *Cano, supra*; *Fitzpatrick v. Illinois Human Rights Commission*, 267 Ill.App.3d 386, (4th Dist.1994).

Conclusions of Law

1. Respondent's Motion for Summary Decision appears on its face to be well grounded and supported by existing application of the law.
2. Respondent's supporting documents and the remainder of the record show that there are no genuine issues of material fact as to whether the doctrine of res judicata applies to bar the instant Complaint.
3. The doctrine of res judicata bars Complainant from seeking relief in this forum based upon the facts underlying this Complaint.
4. Therefore, Respondent is entitled to summary decision.

Determination

Respondent's Motion for Summary Decision should be granted as it appears on its face to be valid, supported by existing law, and Complainant has failed to present any response whatsoever to the motion.

Recommendation

The doctrine of res judicata bars Complainant from seeking relief in this forum based upon the facts underlying this Complaint. It is, therefore, recommended that the Complaint be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

By: _____

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: July 24, 2001